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CLERK U.S. BANKRUPTCY COURT  
Central District of California  
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**NOT FOR PUBLICATION**  
**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**  
**LOS ANGELES DIVISION**

In re:

ADRIAN J. HERNANDEZ,

Debtor.

Case No. 2:12-bk-47099-RK

Chapter 7

**MEMORANDUM DECISION ON DEBTOR'S  
MOTION FOR SANCTIONS AGAINST  
CREDITORS JAIME FARIAS AND MYRNA  
FARIAS FOR WILLFUL AND CONTINUING  
VIOLATION OF THE DISCHARGE  
INJUNCTION**

Date: October 24, 2017

Time: 1:30 p.m.

Courtroom: 1675

Pending before the court is the contested matter of the motion of Debtor Adrian Hernandez ("Debtor") for sanctions against Creditors Jaime Farias and Myrna Farias ("Creditors") for willful and continuing violation of the discharge injunction, filed on July 8, 2015, Electronic Case Filing (ECF) Number 40. See Fed. R. Bankr. P. 9014. Creditors filed their opposition to the motion on July 21, 2015, ECF 42. The motion was first heard on August 5, 2015. The court stayed the proceedings because Creditors

1 filed an adversary proceeding for debt dischargeability which may have rendered this  
2 contested matter moot if they had prevailed. However, Debtor prevailed in that  
3 adversary proceeding, and the court reset this contested matter for hearing on October  
4 24, 2017.

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6 At the hearing on this contested matter on October 24, 2017, Eric Bensamochan,  
7 of The Bensamochan Law Firm, appeared for Debtor, and Michael Jay Berger, of the  
8 Law Offices of Michael Jay Berger, appeared for Creditors. At this hearing, counsel for  
9 the parties indicated to the court that no further briefing and evidence was needed for  
10 the court to decide the motion, thus, waiving an evidentiary hearing wherein live  
11 testimony would be given. The court then took the motion under submission and now  
12 renders its decision on the motion, setting forth its findings of fact and conclusions of  
13 law in this contested matter pursuant to Fed. R. Bankr. P. 7052.

14  
15 The background facts of this case are not disputed. See Motion at 2 and Exhibits  
16 A-C attached thereto, ECF 40; Opposition at 2-3, ECF 42. On November 5, 2012,  
17 Debtor commenced this bankruptcy case by filing a voluntary petition for relief under  
18 Chapter 7 of the Bankruptcy Code, 11 U.S.C. ECF 1. On November 12, 2012, Debtor  
19 filed his original Schedule F, Creditors Holding Unsecured Creditors Holding Unsecured  
20 Nonpriority Claims, listing Creditors as having a "Contingent/Possible Claim," with an  
21 address at 11941 Cohasset St. North Hollywood, CA 91605. ECF 12 at 20. The  
22 creditors mailing matrix in this case listed an additional address for Creditors at 6100  
23 Wilshire Blvd., Suite 1170, Los Angeles, CA 90048, which is the address of David  
24 Greenberg, Attorney at Law, who was their attorney at the time. Opposition at 3.  
25 Apparently, this additional address for Creditors was added to the creditors mailing  
26 matrix when it was added as an additional address for Creditors on the service list for  
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1 Debtor's amended Schedule F, filed on November 28, 2012, ECF 14 at 32. On March  
2 18, 2013, an order granting discharge to Debtor was entered in this case. ECF 28. On  
3 March 20, 2013, the Bankruptcy Noticing Center on behalf of the court served by first  
4 class mail notices of the discharge on creditors, including Creditors Jaime Farias and  
5 Myrna Farias at the above-listed addresses at 11941 Cohasset St., North Hollywood,  
6 CA 91605, and 6100 Wilshire Blvd., Suite 1170, Los Angeles, CA 90048. ECF 29 at 1-  
7 6. On April 24, 2015, Creditors filed a second amended complaint against Debtor for  
8 fraud in the Superior Court of California for the County of Los Angeles. This complaint  
9 asserted claims for damages against Debtor for alleged prepetition acts, which claims  
10 may constitute dischargeable prepetition unsecured debts.  
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13 Other facts of this case are disputed, and the court will discuss and resolve these  
14 factual disputes below.

15 Debtor contends that Creditors are liable for sanctions for violating the discharge  
16 injunction by having notice of his bankruptcy case and prosecuting the state court  
17 lawsuit against him to collect a prepetition, dischargeable debt for damages. Creditors  
18 contend that they had no knowledge of his bankruptcy case due to inadequate notice  
19 being given by Debtor of his bankruptcy case, and thus, they are not subject to  
20 sanctions for knowingly violating the discharge injunction.  
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22 The court determines that Debtor as the party moving for contempt has failed to  
23 meet his burden of showing by clear and convincing evidence that Creditors knowingly  
24 violated the discharge injunction in prosecuting their state court lawsuit against him.

25 Debtor has not demonstrated that they had adequate notice of his bankruptcy case.

26 The Cohasset Street address for Creditors on Debtor's amended bankruptcy schedules  
27 was not a proper service address for them as Mr. Farias stated in his declaration that at  
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1 the time of the filing of the amended schedules, Creditors' residential address was  
2 different, i.e., in Calabasas, California, not North Hollywood, California, where the  
3 Cohasset Street property was located. ECF 42 at 7, ¶ 2. Mr. Farias further stated in his  
4 declaration that while Creditors owned the Cohasset Street property, they never  
5 received mail there and had sold that property eight months before Debtor commenced  
6 his bankruptcy case. *Id.* The court finds Mr. Farias's testimony in his declaration to be  
7 credible on these points. (In this regard, the court notes that the parties waived an  
8 evidentiary hearing in this contested matter at the hearing on October 24, 2017 and that  
9 Mr. Farias's testimony on these points is uncontroverted.) So any bankruptcy notices to  
10 Creditors at the Cohasset Street address would have been incorrect, and Debtor has  
11 not otherwise demonstrated that Creditors had notice of his bankruptcy case through  
12 the Cohasset Street property address.

15 Although Creditors in Mr. Farias's declaration, ECF 42 at 7, ¶ 3, acknowledge  
16 that their attorney, David Greenberg, was listed as an additional address for them on  
17 the creditors' mailing matrix in this case, and thus, presumably notices of the bankruptcy  
18 case were sent to him, Debtor has not shown by clear and convincing evidence that any  
19 service of such notices resulted in actual knowledge of the bankruptcy case by  
20 Creditors. Mr. Farias said in his declaration that Creditors did not receive any notice of  
21 Debtor's bankruptcy case from Mr. Greenberg. *Id.* The court finds Mr. Farias's  
22 testimony in his declaration to be credible on these points. (In this regard, the court  
23 again notes that the parties waived an evidentiary hearing in this contested matter at the  
24 hearing on October 24, 2017, that Mr. Farias's testimony on these points is  
25 uncontroverted and that no one called the former attorney, Mr. Greenberg, as a  
26 witness.) Thus, the court finds that Debtor has not otherwise shown by clear and  
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1 convincing evidence that Creditors had actual knowledge of his bankruptcy case  
2 through the attorney. As the Ninth Circuit stated in *ZiLog, Inc. v. Corning (In re ZiLog,*  
3 *Inc.)*, 450 F.3d 996, 1008 (9<sup>th</sup> Cir. 2006), imputed knowledge, i.e., service on an agent,  
4 is not actual knowledge sufficient to establish contempt.

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6 Creditors' filing and prosecution of the state court lawsuit to collect the alleged  
7 prepetition debt of Debtor after the granting of the discharge violate the discharge  
8 injunction, but they have no liability for contempt unless such violation was knowing. On  
9 this record, Debtor's assertion in his declaration that Creditors had actual notice of his  
10 bankruptcy case when they filed and prosecuted the state court action is not supported  
11 by the evidence. In particular, the court finds Mr. Farias's testimony in his declaration,  
12 ECF 42 at 7-8, ¶¶ 3-4, that Creditors had no actual notice of Debtor's bankruptcy case  
13 before they filed the second amended complaint in the state court action to be credible  
14 and demonstrates that Debtor's assertion that they had actual notice is without merit.  
15 (In this regard, the court again notes that the parties waived an evidentiary hearing in  
16 this contested matter at the hearing on October 24, 2017 and that Mr. Farias's  
17 testimony on these points is uncontroverted.)

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20 Therefore, the court determines that Debtor has not shown any knowing violation  
21 of the discharge injunction by Creditors by clear and convincing evidence. However,  
22 because the court has determined in the adversary proceeding that there is no debt  
23 owing by Debtor to Creditors, which is excepted from discharge, Creditors may not now  
24 proceed further against Debtor in the state court action to collect any prepetition debt  
25 not excepted from discharge, and they had better now dismiss the lawsuit, if they have  
26 not done so already, in order to stay out of contempt for violation of the discharge  
27 injunction.  
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**ANALYSIS**

**Debtor Failed to Prove by Clear and Convincing Evidence that Creditors had Actual Knowledge of the Discharge Injunction for the Court to Hold Them in Civil Contempt.**

Under 11 U.S.C. § 105(a) and Federal Rule of Bankruptcy Procedure 9020, bankruptcy courts have authority over civil contempt proceedings and to impose sanctions for civil contempt. *In re Rainbow Magazine, Inc.*, 77 F.3d 278, 284-85 (9th Cir. 1996). 11 U.S.C. § 524(a)(2) “operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor.” 11 U.S.C. § 524(a)(2). Civil contempt is the appropriate remedy for the violation of the discharge injunction. *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 507 (9th Cir. 2002). Debtor has the burden of proving by clear and convincing evidence that the offending creditor knowingly and willfully violated the discharge injunction. *In re Kabiling*, 551 B.R. 440, 444 (9th Cir. BAP 2016), *citing*, *ZiLog, Inc. v. Corning (In re ZiLog, Inc.)*, 450 F.3d 996, 1007 (9th Cir. 2006). “The offending creditor acts knowingly and willfully if (1) it knew the discharge injunction was applicable and (2) it intended the actions which violated the injunction.” *Id.*

With respect to the first element of knowledge on Debtor’s claim for contempt based on a violation of the discharge injunction, a creditor cannot be held in contempt for violating the discharge injunction unless the creditor had actual knowledge of the injunction. *In re Kabiling*, 551 B.R. at 445, *citing*, *In re ZiLog, Inc.*, 450 F.3d at 1008. With respect to the second element of intent, courts apply the same analysis regarding violations of the discharge injunction as they do with violations of the automatic stay. *In re Kaibiling*, 551 B.R. at 445 (citation omitted). “The focus is on whether the creditor’s

1 conduct violated the injunction and whether that conduct was intentional; it does not  
2 require a specific intent to violate the injunction.” *Id.*, citing, *In re Dyer*, 322 F.3d 1178,  
3 1191 (9<sup>th</sup> Cir. 2006). In the past, courts have found actual knowledge where creditors  
4 undisputedly received notice. See, e.g., *In re Zilog, Inc.*, 450 F.3d at 1009, citing, *In re*  
5 *Dyer*, 322 F.3d at 1192.  
6

7 Creditors contend that they were “unaware of Debtor’s bankruptcy at the time of  
8 the filing” because of “Debtor’s failure to provide adequate notice.” *Declaration of Jaime*  
9 *Farias*, ECF 42 at 7, ¶ 3. Debtor listed two addresses for Creditors in his bankruptcy  
10 schedules which were reflected in the creditors mailing matrix, neither of these two  
11 addresses was correct. See *Declaration of Jaime Farias* at 7, ECF 42 at 7, ¶¶ 2-3. One  
12 of the addresses was a property on Cohasset Street in North Hollywood, California (the  
13 “Cohasset Address”) that the Creditors had only owned for a short time but had never  
14 lived at, nor received any mail there. *Id.* at 7, ¶ 2. The other address belonged to a Mr.  
15 David Greenberg, who had been Creditors’ attorney (the “Attorney Address”). *Id.* at 7, ¶  
16 3.  
17

18 Debtor contends that service to the Attorney Address constituted adequate  
19 service because “the great weight of modern authority is to the effect that notice of  
20 bankruptcy to a creditor’s attorney is sufficient to bind the creditor if it is received while  
21 the attorney is still representing his client.” *Reply to Opposition* at 2, lines 13-15. In  
22 support of his contention, Debtor cites several cases, including *In re Price* decided by  
23 the Bankruptcy Appellate Panel of the Ninth Circuit and affirmed by the Ninth Circuit in  
24 *Lompa v. Price*. In its decision, the Ninth Circuit emphasized the specific facts of notice  
25 in that case, stating “*under these circumstances* notice to counsel constituted notice to  
26 the appellant.” *Lompa v. Price*, 871 F.2d 97, 99 (9th Cir. 1989) (emphasis added). The  
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1 Ninth Circuit observed that the counsel who received notice was “pursuing the same  
2 claim in state court,” *Lompa v. Price*, 871 F.2d at 99, and the Bankruptcy Appellate  
3 Panel observed that “notice to a creditor’s attorney of a bankruptcy filing is usually  
4 sufficient *if the attorney received knowledge of it while representing his client in*  
5 *enforcing a claim against the bankrupt.*” *In re Price*, 79 B.R. 888, 890 (9th Cir. BAP  
6 1987)(emphasis in original), *quoting Maldonado v. Ramirez*, 37 B.R. 219 (D. V.I. 1984)  
7 (internal citations omitted).

9 Debtor’s Amended Schedule F, also listing Creditors at the Attorney Address,  
10 was filed on November 28, 2012. Debtor’s discharge was granted and entered in this  
11 case on March 20, 2013. The proof of service for the notice to creditors regarding the  
12 discharge shows “Jamie Farias, Myrna Farias” were served at the Attorney Address.  
13 ECF 29. Creditors initiated the state court action against Debtor on April 1, 2014.  
14 Unlike the situation in *Lompa v. Price* and *In re Price*, notice to Creditors’ attorney did  
15 not constitute proper notice here where (1) there is no evidence that shows the attorney  
16 was actively representing the creditors to enforce claims against the debtor at the time  
17 that notice of the bankruptcy was given to the attorney, and (2) the notice to Creditors at  
18 the Attorney Address did not actually list the attorney’s name and relationship to  
19 Creditors.  
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22 Debtor has not shown by clear and convincing evidence that Creditors’ former  
23 attorney was enforcing a claim against the Debtor *at the time* notice was sent to  
24 attorney. Although Creditors state in their declaration that “[the Attorney Address]  
25 belongs to David Greenberg, who was Creditors’ counsel at the time,” *Declaration of*  
26 *Jaime Farias*, ECF 42 at 7, ¶ 3, this statement as well as the other evidence in this case  
27 do not demonstrate that Mr. Greenberg was representing Creditors in an action against  
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1 Debtor at that time Mr. Greenberg allegedly received notice of the bankruptcy case.  
2 Indeed, the evidence in the record suggests the opposite: that the Creditors did not  
3 have any pending litigation claims against Debtor at the time notice of the bankruptcy  
4 case was sent out to the attorney. *Declaration of Jaime Farias*, ECF 42 at 7-8, ¶¶ 3-4.  
5 Mr. Farias's testimony that "[h]ad we been given proper notice of Debtor's bankruptcy,  
6 we would have commenced an adversary proceeding against the Debtor for non-  
7 dischargeability based on fraud and willful malicious injury by the Debtor" makes sense  
8 and is credible, a further indication that they did not have prior actual notice of Debtor's  
9 bankruptcy case.  
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11  
12 In addition, the address listed on the court notice regarding discharge that was  
13 filed and served on Creditors, ECF 29, was the address of their attorney. However,  
14 while Creditors were named in this notice, their attorney was not. The notice made no  
15 mention that the Attorney was being served in the capacity of Creditors' attorney. Thus,  
16 the court determines that Debtor failed to show with clear and convincing evidence that  
17 service on Creditors at the Attorney Address was reasonably calculated to apprise them  
18 of the bankruptcy case and that they had actual knowledge of the bankruptcy case.  
19

20 The Supreme Court set forth the standard for adequate service in *Mullane v.*  
21 *Central Hanover Trust Company*, 339 U.S. 306 (1950), "An elementary and  
22 fundamental requirement of due process in any proceeding which is to be accorded  
23 finality is notice *reasonably calculated, under all the circumstances*, to apprise  
24 interested parties of the pendency of the action and afford them an opportunity to  
25 present their objections." *Id.*, 339 U.S. at 314 (emphasis added). The Supreme Court  
26 further stated:  
27

28 . . . [P]rocess which is a mere gesture is not due process. The means  
employed must be such as one desirous of *actually informing* the

absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected.

*Id.* at 315 (emphasis added).

Courts have found that generally “mailing a notice to a party’s last-known address is ‘reasonably calculated’ to provide actual notice.” See, e.g., *In re Freedom Communications Holdings, Inc.*, 472 B.R. 257, 262 (Bankr. D. Del. 2012), citing *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 490 (1988)).

In this case, Debtor has not shown by clear and convincing evidence that the Cohasset Address he listed to notify Creditors of his bankruptcy case filing was reasonably calculated to apprise them of the situation of the bankruptcy case filing or was their last-known address. The uncontroverted evidence based on Mr. Farias’s testimony in his declaration is that the Cohasset Address was not a proper address to serve them since it was not their residence, they only owned the Cohasset Street Property for a short time, they never received mail there, they had sold it before Debtor filed his bankruptcy case, and thus, not reasonably calculated to give them notice.

Debtor’s argument that the Creditors had actual notice of a bankruptcy case of another debtor, but chose to sue her in state court anyway is besides the point because that is not this case. *Reply to Opposition*, ECF 43, at 3, lines 7-10. That Debtor argues that “Creditors merely ignored or were willfully ignorant to the bankruptcy filing,” *Reply to Opposition*, ECF 43 at 3, line 2, does not meet his burden of demonstrating actual notice of Creditors of his bankruptcy case to support a finding of contempt by clear and convincing evidence. Although “the standard for what amounts to constitutionally adequate notice . . . is fairly low,” *Espinosa v. United Student Aid Funds, Inc.*, 553 F.3d 1193, 1202 (9th Cir. 2008) *affirmed*, 559 U.S. 260 (2010), the standard of knowledge for

1 civil contempt must be actual knowledge and “[k]nowledge of the injunction, which is a  
2 prerequisite to its willful violation, cannot be imputed; it must be found.” *In re ZiLog*, 450  
3 F.3d at 1008. Thus, under the standard for actual knowledge, Debtor’s argument that  
4 Creditors had knowledge from receiving notices in other bankruptcy cases does not  
5 show by clear and convincing evidence that Creditors had actual notice of this  
6 bankruptcy case.  
7

8 Accordingly, the court will enter a judgment in favor of Creditors and against  
9 Debtor in this contested matter of his motion for civil contempt and sanctions. A  
10 separate judgment is being entered concurrently herewith.  
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12 IT IS SO ORDERED.

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25 Date: December 5, 2017



Robert Kwan  
United States Bankruptcy Judge